

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Interim Suspension
Order Against:

HENRY CHAN,

Pharmacist License No. RPH 56135,

Respondent.

Case No. 6317

OAH No. 2017120330

EX PARTE INTERIM SUSPENSION ORDER

Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on December 13, 2017, in San Diego, California.

Alan Macina, Deputy Attorney General, represented petitioner Virginia Herold, Executive Officer of the California State Board of Pharmacy.

Jamahl C. Kersey, Attorney at Law, appeared on respondent's behalf. Respondent did not appear.

Documentary evidence was received, read and considered, and the matter was submitted on December 13, 2017.

FACTUAL FINDINGS AND LEGAL CONCLUSIONS

1. On December 8, 2017, petitioner filed an Ex Parte Petition for Interim Suspension Order (Petition) seeking to suspend, pending a full hearing on the merits, Pharmacist License No. RPH 56135 issued to respondent. The Petition included the certificate of respondent's licensure as a pharmacist; the declaration of Alan Macina, Deputy Attorney General; the Declaration of Drug Enforcement Agency (DEA) Special Agent Jose A. Gil with his investigative report; the Declaration of Board Inspector Trang Song with respondent's statement and annotated surveillance photos taken on July 13, 2017, August 7, 2017, September 25, 2017, and October 6, 2017; the Declaration of Kaiser Area Pharmacy Director Louise Lu; and criminal case information regarding San Diego Superior Case No. CD274282. These materials were submitted in support of the petition under Business and Professions Code section 494.

2. As documented in these materials, respondent worked as a manager and pharmacist at the Kaiser Permanente Pharmacy in Rancho Bernardo. In October 2017,

auditors at Kaiser noticed discrepancies in the stock logs of hydrocodone.¹ These logs showed that between July 2016 and September 2017, at least 14,000 hydrocodone tablets could not be accounted for.

In August and September 2017, surveillance video recorded respondent taking twelve boxes of hydrocodone bottles containing 100 tablets each and placing them in his office. On October 25, 2017, the DEA arrested respondent. After his arrest, respondent told Agent Gil that he began stealing hydrocodone from the pharmacy after his doctor refused to write him prescriptions for the pain. Respondent had been prescribed pain medication for a knee injury and was using 15 to 25 hydrocodone tablets daily. Initially, he said he stole one box every six to eight months while working at the pharmacy. But, as his addiction worsened he began stealing more often. He estimated to Agent Gil that he stole 10,000 tablets of hydrocodone from the pharmacy.

On this same date, as documented in Agent Gil's report, respondent admitted to Joaquin Basauri, Senior Investigator at Kaiser's National Investigation Unit, that the actual number of hydrocodone tablets he stole was 14,400 tablets, after respondent reviewed Kaiser pharmacy stock logs Investigator Basauri showed him. He further admitted to Investigator Basauri that he used the employee identification numbers of other Kaiser employees when stealing from the pharmacy. In addition to stealing hydrocodone, respondent admitted that he stole 8 to 10 bottles of Tramadol.² During a search of respondent's residence on October 25, 2017, DEA agents found a box containing four sealed stock pharmaceutical bottles labeled as hydrocodone.

On November 1, 2017, Board Inspector Trang Song interviewed respondent and he told her that to avoid the withdrawal symptoms he experienced if he did not take hydrocodone he stole hydrocodone tablets while he was working as pharmacist. In a two page statement he gave Inspector Song he detailed his hydrocodone use and his addiction to the medication. He stated that he planned to enter an inpatient treatment program beginning on November 20, 2017, to address his addiction.

3. A preponderance of the evidence established that respondent engaged in unprofessional conduct in violation of Business and Professions Code section 4301, subdivisions (f), (h) and (j).

Respondent committed fraud through theft and deception when between July 2016 and through September 2017, he stole 14,400 hydrocodone tablets and 8 to 10 bottles of Tramadol from the pharmacy where he worked as a pharmacist. Respondent, further, administered to

¹ Hydrocodone, or Vicodin, is a semi-synthetic opioid derived from codeine and is a Schedule II controlled substance pursuant to Health and Safety Code section 11055, subdivision (b).

² Tramadol, or Ultram, is a Schedule IV opioid pain medication.

himself controlled substances to an extent and manner to be dangerous to himself, and he violated laws regulating controlled substances and dangerous drugs. He furnished to himself controlled substances in violation of Health and Safety Code section 11170, and he possessed controlled substances without a prescription controlled substances in violation of Business and Professions Code section 4060.

4. Permitting respondent to continue to practice as a pharmacist would endanger the public health, safety, and welfare.

5. Serious injury would result to the public welfare unless this order is issued before the matter can be heard pursuant to the notice required by Business and Professions Code section 494, subdivision (b).

6. Cause exists pursuant to Business and Professions Code section 494 to suspend respondent's pharmacist license pending a full hearing on the merits.

ORDER

Accordingly, it is ordered:


1. Pharmacist License No. RPH 56135 issued to Henry Chan is immediately suspended and respondent is prohibited from practicing as a pharmacist in the State of California pending further order or Decision.

2. The noticed hearing on the Petition will be heard at the Office of Administrative Hearings, 1350 Front Street, Suite 3005, San Diego, California on December 29, 2017, at 10:00 a.m.

3. Documents and affidavits in opposition to the Petition may be filed by respondent by close of business on or before December 26, 2017. Petitioner may reply to any documents or affidavits filed by respondent by close of business on or before December 28, 2017.

4. Petitioner shall serve a copy of this order, with the declarations and all other information in support of the Petition, at respondent's address of record on file with the California State Board of Pharmacy, with a courtesy copy to respondent's attorney, by an overnight mail delivery service.

DATED: December 14, 2017

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ABRAHAM M. LEVY
Administrative Law Judge
Office of Administrative Hearings